Supreme Court, U.S.
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No. 88-1340

In The Supreme Court Of The United States

OCTOBER TERM, 1988

CHARLES F. WISHART, AND
BOBBIE SUE WISHART,
Appellants,

vs.

LESLIE BATES (BOGGS),
Appellee.

ON APPEAL FROM THE SUPREME COURT
OF THE STATE OF FLORIDA

MOTION OF APPELLEE TO DISMISS

LESLIE BATES (BOGGS)
P.O. Box 4
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(813) 623-6893
Appellee pro se

24pp

QUESTIONS PRESENTED

1. Whether the court has jurisdiction under 28 U.S.C. 1257(1), because neither the validity of a Federal law, nor a decision against its validity have been drawn into question.

2. Whether the court has jurisdiction because this litigation does not deal with matters of concern beyond the interest of the immediate litigants.

3. Whether the court has jurisdiction because this decision does not present a substantial Federal question and the Appellants questions are so unsubstantial as to not need further argument.

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MOTION TO DISMISS

Appellee, Leslie Bates (Boggs), respectfully moves pursuant to R. 16 (1)(b) and (d) to dismiss this appeal because no federal question was raised below and there has been no decision against the validity of a federal law, the questions presented affect only the immediate litigants and do not pertain to matters of public concern, and the issues presented do not raise substantial federal question meriting review by this court.

———o———

CITATIONS TO OPINIONS BELOW

The text of opinions, Judgments and Orders below are contained in the Appellants and/or Appellees Jurisdictional Statements.

———o———

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Appellee argues herein that the Wisharts have not been denied their "rights"

granted by the Treaty of Amity dated in 1819, the Paris Peace Tready dated in 1898, nor the Treaty of Friendship and General Relations dated in 1902.

The paramount issue is a childs best interests as protected by Florida Statute 61.13 and the Uniform Child Custody Jurisdiction Act.

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STATEMENT OF THE CASE AND FACTS

In 1983 the Wisharts abducted Tiffany, and "refused" to return her to either of her natural parents.

In a legal effort to get Tiffany back, Leslie filed for divorce and custody of of Tiffany, in Bates v. Wishart, 13 Jud. Cir., Case No. 83-7250. (Listed in the Wisharts Table of Authorities as Case No. 83-7240.)

The Wisharts were enjoined because they illegally withheld a child from its natural parents, which did not give them

legal standing as "contestants".

The Wisharts have never had legal custody nor legal guardianship of Tiffany.

The Wisharts deliberately caused the the final hearing to be delayed until December 1984, at which time Leslie was granted custody of Tiffany.

The Wisharts refused to accept either the divorce or the custody decision, and appealed in Wishart v. Bates, 487 So. 2d 342 (Fla. 2d DCA 1986) (DCA No. 85-1128).

In deliberate defiance of court orders, Florida Statute 61.13, the Uniform Child Custody Jurisdiction Act, the Clean Hands Doctrine, Christian Ethical Values, and the Disciplinary Rules of the Florida Bar Association, they resorted to absconding with Tiffany.

After Tiffany was found and returned to Leslie, the harassment continued with motions and hearings without end, and visitation was canceled because no mother

should have to live in constant fear of her child being abducted.

The Wisharts conduct still involves dishonesty, fraud, deceit, and misrepresentation, that is prejudicial to the administration of justice.

By complaint, as instituted by Leslie, the Florida Bar Association has administered its own hearings and investigations into the misconduct of Charles Wishart. Their conclusion disclosed violations of eight Disciplinary Rules in conjunction with this litigation, (TFB No. 13C85100). Proceedings on their recommendation for disbarrment are pending in the Florida Supreme Court. (FSC No. 70,584)

Pursuant to Wishart v. Bates, 487 So. 2d 342 (Fla. 2d DCA 1986), (DCA Case No. 85-1128) the appellate court granted the Wisharts "further hearing" on their petition for custody, but the Final Judgment was neither voided nor reversed.

The Wisharts continued to file motions and set hearings based on their erroneous claim that they had custody of Tiffany, but continued to delay the "further hearing" obtained in DCA No. 85-1128.

Because the Wisharts continued to misrepresent that they had custody, the appellate court clarified that the Final Judgment was neither reversed nor voided, that Leslie still had custody of Tiffany, and the Wisharts had merely been granted "further hearing" on their petition for custody.

The Wisharts have kept this litigation ongoing since 1983 although this case file substantiates that Leslie is and always has been a fit and proper parent.

The hostility between the Wisharts and Leslie should have been sufficient cause for each of the long succession of judges to eliminate visitation and cease this

litigation.

Litigation has been further intricated and encumbered by the Wisharts "suits" against everyone they have involved including attorneys, doctors, H.R.S. personnel, and the judges.

In brief, due to the duration and complexity of this litigation, in conjunction with the long succession of judges, all accomplishments of the Wisharts, visitation has been granted, altered, and ultimately denied.

Judge Peter J.T. Taylor's "Order Disqualifying Charles F. Wishart as Attorney of Record for Bobbie Sue Wishart", dated August 2, 1986, has not deterred him from constantly filing motions.

At a procedural hearing prior to the conclusion of the "further hearing" by Judge Evans, a trial judge granted visitation and appellate cost to the Wisharts.

Leslie appealed in Bates v. Wishart, 512 So. 2d 977 (Fla. 2d DCA 1987), (DCA No. 86-2408) because visitation was granted at a procedural hearing of legal argument only with no evidence being heard as to Tiffanys best interests, and because the Wisharts were not entitled to appellate costs because the Final Judgment was neither reversed nor voided by the first panel in DCA No. 85-1128.

In DCA No. 86-2408, the second panel reversed the award of appellate costs because the first panel neither reversed nor voided the Final Judgment in DCA No. 85-1128.

The second panels mandate also reversed the award of visitation, but for reason other than that the trial court abused its jurisdiction in awarding visitation to the Wisharts with no evidence being heard as to the childs best interests as stated in Leslies brief.

The "further hearing" resumed and concluded with Judge Evans' "ORDER GRANTING MOTION FOR DISMISSAL OF THE WISHARTS COUNTER-CLAIM FOR CUSTODY OF TIFFANY BATES" dated December 17, 1987 pursuant to DCA Case No. 85-1128 which reaffirmed that Leslie is a fit and proper parent with custody of Tiffany and supercedes prior orders.

Simultaneous with the conclusion of the five days of further hearing proceedings before Judge Evans, the Wisharts invoked the jurisdiction of the Florida Supreme Court on DCA Case No. 86-2408. was denied.

The Wisharts motion for rehearing of Judge Evans order was denied.

The Wisharts filed a Notice of Appeal on the results of the "further hearing" they obtained in DCA Case. No. 85-1128.

They neither filed a brief nor a

motion to stay with the appellate court, and subsequently, their appeal, DCA Case No. 88-772, was dismissed.

The Wisharts presented no Federal question to the Florida Supreme Court in their appeal of Bates v. Wishart, 512 So. 2d 977 (Fla. 2d DCA 1987), (DCA No. 86-2408), (FSC No. 71,370), and the court addressed the only substantial question presented.

The mandate of the Florida Supreme Court did not reverse custody, but only remanded the issue of whether the trial court abused its jurisdiction in determining that awarding visitation to the Wisharts was in the childs best interests.

The Wisharts have filed a motion for a rehearing of the dismissal of DCA Case No. 88-772.

Currently, the Appellate Court has the mandate in Bates v. Wishart, 512 So. 2d

DCA 977 (Fla. 2d DCA 1987) (DCA 86-2408) (FSC No. 71,370) under consideration for re-wording and also the Wisharts motion for re-hearing of the dismissal of DCA No. 88-772; and after having denied Tiffany and Leslie their "rights" for six years through unmerited litigation, the Wisharts have invoked the jurisdiction of this Honorable Court on the grounds that "they" have been denied "their" rights granted by the Treaty of Amity, the Paris Peace Treaty, and the Treaty of Friendship and General Relations.

The paramount issue of Tiffanys welfare and best interests must cease being sacrificed for the Wisharts "rights".

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I. THE COURT LACKS JURISDICTION UNDER 28 U.S.C. 1257(1) BECAUSE A FEDERAL LAW WAS NOT DRAWN INTO QUESTON AND THE DECISION WAS NOT AGAINST ITS VALIDITY

28 U.S.C. 1257(1) provides for appeal to the United States Supreme Court when

the validity of a federal law is drawn into question and the decision is against its validity.

No federal law was drawn into question below, and there has been no decision against the validity of a Federal law.

The Wisharts freedom of religion has not been denied, and their "rights" are not at issue.

Therefore, Appellee moves the Court to dismiss this appeal for lack of jurisdiction under 28 U.S.C. 1257(1).

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II. THE COURT LACKS JURISDICTION BECAUSE THIS DECISION ONLY AFFECTS THE IMMEDIATE LITIGANTS

This litigation affects only Tiffany and Leslie, and is of no concern to the general public.

The flagrant abuse of the judicial system by Charles Wishart, the attorney, the officer of the court, the constitutional officer must not be allowed to set

a precident that could affect the general public.

The Appellants abuse of the judicial system, violation of the Florida Bar Disciplinary Rules, the Clean Hands Doctrine, state and federal laws, and lack of Christian Ethical Values, have only affected Tiffany and Leslie.

The cases set forth by Appellants are not related to the litigation in this appeal.

Justice in this case has been overdone for the Wisharts and delayed and denied for Tiffany and Leslie.

Leslie faced the Wisharts before Judge Menendez in the final hearing in 1984, and again before Judge Evans in 1987, and should not be subjected to the further delay and expense of a third trial in 1989.

Therefore, this Court should dismiss

this appeal as it only affects the immediate litigants and does not affect the general public, and the paramount issue of custody and/or visitation is moot.

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III. THIS DECISION DOES NOT PRESENT A SUBSTANTIAL FEDERAL QUESTION AND DOES NOT NEED FURTHER ARGUMENT

The decision of the court below remanding a non-final order to the Appellate Court to reword their mandate reversing visitation that was granted that was not in Tiffanys best interest does not raise a substantial Federal Question and needs no further argument.

The Wisharts personal opinion of the problems with, and remedies for, the judicial system do not constitute a substantial federal question, therefore, this Court should dismiss this appeal.

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CONCLUSION

For the reasons set forth above, it is

respectfully submitted that the within appeal should be dismissed due to lack of jurisdiction under 28 U.S.C. 1257(1), and/or because the issue of this appeal only affects the immediate litigants and and does not affect the general public, and/or because this appeal does not present a substantial Federal question and needs no furthur argument, and most importantly, continued litigation is detrimental to Tiffanys best interest and must cease.

Respectfully submitted
Leslie Bates (Boggs)
P.O.Box 4
Seffner, Fla. 33584

Appellee pro se

Dated: March 8, 1989

IN THE SUPREME COURT OF FLORIDA
(Before a Grievance Committee)

THE FLORIDA BAR,
Complainant,
v.

CONFIDENTIAL

TFB No. 13C85100

CHARLES F. WISHART,
Respondent.
_____/

NOTICE OF FINDINGS OF PROBABLE CAUSE FOR FURTHER DISCIPLINARY PROCEEDINGS

You are hereby noticed that the Thirteenth Judicial Circuit Grievance Committee C, on the 27th day of March, 1986, found probable cause for further disciplinary proceedings. The committee found violations of the following Disciplinary Rules.

(1) DR 1-102(A)(4) (Engage in conduct involving dishonesty, fraud, deceit, or misrepresentation);

(2) DR 1-102(A)(5) (engage in conduct that is prejudical to the administration of justice);

(3) DR 7-102(A)(1) (file a suit, assert a position, conduct a defense, delay a trial, or take other action on behalf of his client when he knows or when it is obvious that such action would serve merely to harass or maliciously injure);

(4) DR 7-102(A)(3) (conceal or knowingly fail to disclose that which he is required to reveal);

(5) DR 7-102(A)(7) (counsel or assist his client in conduct that the lawyer knows to be illegal or fraudulent);

(6) DR 7-106(C)(4) (assert his personal opinion as to the justness of a cause, as to the credibility of a witness, as to the culpability of a civil litigant, or as to the guilt or innocence of an accused; but he may argue, on his analysis of the evidence for any position or conclusion with respect to the matters stated herein);

(7) DR 7-106(C)(6) (engage in undignified or discourteous conduct which is degrading to a tribunal); and

(8) DR 7-106(C)(7) (intentionally or habitually violate any established rule of procedure or of evidence).

The record of proceedings before the grievance committee has been referred to the undersigned staff lawyer for drafting and filing of a formal complaint pursuant to Florida Bar Integration Rule, article XI, Rule 11,04(6)(b) (1979).

Your further attention is called to Florida Bar Integration Rule, article XI, Rule 11.13(6)(a) (1979).

/s/ Lynn H. Cole

LYNN H. COLE, Chairman
Grievance Committee "13C"
Suite 611
315 East Madison Street
P.O. Box 2111
Tampa, Fla. 33601
(813) 223-5351

/s/ Stephen Rushing

Stephen Rushing
Branch Staff Counsel
The Florida Bar
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing Notice of Probable Cause Findings for Further Disciplinary Proceedings has been furnished to Charles F. Wishart by Certified Mail, return receipt requested, No. P436 008 793; a copy to Gary R. Trombley, Designated Reviewer, Post Office Box 3356, Tampa, Florida 33601; John F. Harkness, Jr.,Executive Director, The Florida Bar, Tallahassee, Florida 32301-8226; and a copy John T. Berry, Staff Counsel, The Florida Bar, Tallahassee, Florida 32301-8226 on this 28th day of April, 1986.

/s/ Stephen Rushing

IN THE CIRCUIT COURT OF THE THIRTEENTH JUDICIAL CIRCUIT IN AND FOR HILLSBOROUGH COUNTY, STATE OF FLORIDA
FAMILY LAW DIVISION

CASE NO. 83-7250

DIVISION G

IN RE: THE MARRIAGE OF:

RANDALL A. BATES, Husband, Respondent Counter-Petition, and Cross Respondent

LESLIE M. BATES, Wife, Petitioner, and Counter Respondent.

CHARLES F. WISHART and BOBBIE SUE WISHART Grandparents, Respondent, Cross-Petitioners, and Counter-Petitioners.

ORDER DISQUALIFYING CHARLES F. WISHART AS ATTORNEY OF RECORD FOR BOBBIE SUE WISHART

THIS CAUSE came on for hearing on Petitioner, LESLIE BATES (BOGGS') Motion to Disqualify before the undersigned Circuit Court Judge on July 30, 1986. Present in Court were Petitioner LESLIE BATES (BOGGS) represented by counsel, and CHARLES F. WISHART and BOBBIE SUE WISHART. The Court, being fully advised in the premises from the record, pleadings and argument of counsel, finds that CHARLES F. WISHART stated in pleadings and re-affirmed to the Court that he is a party in this action, that he has testified in

the past, and that he will testify in the future. Therefore, it is hereby;

ORDERED AND ADJUDGED, AND DECREED:

That CHARLES F. WISHART is disqualified as attorney of record for BOBBIE SUE WISHART as he will testify in this cause.

DONE AND ORDERED in Chambers at Tampa, Florida this 2nd day of August, 1986.

/s/ Peter J.T.Taylor

CIRCUIT JUDGE

COPIES FURNISHED TO:
CHARLES F. WISHART
BOBBIE SUE WISHART
LESLIE BATES (BOGGS)
RANDALL BATES
FAMILY LEGAL CENTERS
LEE ELLEN ACEVEDO